

## COMMENTS - DRAFT REVISION TO OMB CIRCULAR A-76 (December 2002)

### **General Comments**

1. We find the revision a meaningful attempt to incorporate various recommendations cited in the Commercial Activities Panel (CAP) Report. Unfortunately the efforts to rewrite OMB Circular A-76 are far from making it easier for those involved in competition sourcing. The proposed revision would seem to assume agency use of staff and financial resources that are challenging to assemble. It would seem to require dedicating several senior level management officials (assistant secretary or equivalent level), and teams of professional and administrative support staff, skilled and knowledgeable in all aspects of competitive sourcing and OMB Circular A-76.
2. We request that studies underway as of the effective date of the new Circular be grandfathered under the methodologies approved immediately prior to that time. We do not want to risk disrupting planned competitions and direct conversions reported in the Department's FY 02-03 Competitive Sourcing Plan. We do not want to lose time or money by changing methodologies in the midst of a study.
3. We recommend retention of the streamlined cost comparison and the OMB approved Express Review methods as viable options for performing competitive sourcing studies and conversions.
4. The lengthy list of 4.e. official responsibilities will become a major bottleneck in the competitive sourcing process. We recommend that many of these responsibilities be delegable to other lower level, but still senior management officials.
5. We agree with the CAP report that recommends the new FAR-based competitive process be pilot tested prior to government-wide implementation. This notion does not appear to be in the new Circular.
6. We recommend that this Circular not be so prescriptive in defining process. We want OMB approval now for our recently presented Simplified Cost Comparison methodology so we can test the procedure. We suggest that process requirements be stated in a results oriented manner similar to the methodology used for performance based contracting.

### **Specific Comments**

1. Page 1 - Compliance with FAR Chapter 1 covers too broad a myriad of procurement rules and regulations that do not apply to competitive sourcing. To prescribe compliance with the entire set of government-wide acquisition regulations is inappropriate when the pertinent parts, sections, and paragraph numbers should be identified to reduce confusion and keep the document simple.

~~2. Attachment A, paragraph B.1. will require agencies to inventory commercial and inherently governmental positions not subject to the FAIR Act. The FAIR Act is explicit and clear in reporting commercial activities performed by Federal employees. To inventory other positions is beyond the legislative intent of the FAIR Act, and offers little in return on effort expended. Clearly this is not a cost-effective use of agency's resources or taxpayer dollars. **DISCUSS WITH SCOTT.**~~

3. A discrepancy appears in paragraph C.1.b. of Attachment A as to whether or not military personnel should be inventoried according to the proposed revision. Paragraph B.1. specifies reporting of inherently governmental activities performed by military personnel. On the following page in paragraph C.1.b. it states that the FAIR Act does not apply to military personnel in "(d)". Clarification is needed.

4. The requirement in paragraph C.3, Attachment A to provide written justifications for inherently governmental activities is unnecessary. Instead, accountability could be achieved by requiring that the determination be approved by a policy official at the agency in question.

5. Attachment A, paragraph D.1. - We do not agree that all activities should be presumed commercial in nature unless justified as inherently governmental by the 4.e. official. Laboriously documenting designated activities as inherently governmental or core positions increases administrative staff workload and expends scarce agency resources without any benefit, since these determinations are already subject to challenge by employees or potential contractors.

~~6. Page B-2, paragraph A.1.a - Deviation coverage is viewed as overly constraining and micro-managing the competitive process. Based on lessons learned and GAO case studies, it is evident that the current A-76 process may require more than the prescribed time frame contemplated in this revision. **DISCUSS WITH SCOTT**~~

7. Page B-2, Paragraph A.1.c, requires a public reimbursable source to obtain OMB approval prior to participating in a competition. This is anticompetitive in the marketplace, and the added bureaucracy would make the public reimbursable source less viable and less efficient.

8. Will the successful public reimbursable sources of the Federal payroll program competition have to continually compete with other public reimbursable sources or be exempt for a specific time frame?

9. Page B-3, paragraph B.2 states that the contracting officer (CO) shall designate PWS Team membership when in fact this official does not have actual authority and control over program and other administrative support staff offices. The 4.e. official or equivalent level or head of the requiring activity should designate the PWS Team members.

10. Page B-9, paragraph C.3.a. (4) stating denying the MEO the ability to use new subcontracts is unfair to the Government, especially when contractors are permitted to do so without limitation.

11. Page B-17, paragraph C.6.a.(2), time frame specified is likely to be inadequate when the private sector's redacted offer is made available for release. Processing the private sector winning proposal generally takes much longer than allotted response time.

12. Page B-18, D.1. - FAR clause cited is incorrect. Should read FAR 52.207-3. The wording in this paragraph causes considerable concern for Interior's Bureau of Reclamation. The way it is stated in the paragraph, non-appropriated fund civilian employees are not entitled to the Right of First Refusal. Many of the bureau's employees are not paid from appropriated funds. If the intent is really those non-appropriated funded civilian employees as defined in 5 USC 2105(c), then this should be stated as such. If that is not the intent then we suggest it be deleted as it is unfair treatment.

13. Page C-3, paragraph D.1 imposes overly restrictive time limits for completing business case analysis and complying with certification requirements that are counterproductive to senior official exercise of management flexibility and discretion. This process is unduly burdensome and resource intensive.

14. Page C-3, paragraph D.1.i - Use of market surveys is a viable alternative that demonstrates the market trend of costs for services without the undue expense of expense of a solicitation.

15. Page D-1, B. Competitive Requirements will create additional workload associated with competing ISSA's. This will be a labor-intensive effort over the next five years in light of future human resource capital concerns. Recommend exclusion of intra-agency ISSA's and other funding transfers for shared agency expenses.

### **Technical Comments**

1. Page B-3, paragraph B.3.a. - FedBizOpps public announcement is generally a contracting office responsibility and reference to "(see paragraph D.2.below)" should refer to paragraph "D.1." instead.

2. Page B-4, paragraph C.1.a.- Unclear what is the purpose of the reference to "Paragraph D".

3. Page B-5, paragraph C.2.a.(1) refers to violation of "industry service or service grouping norms". Clarify or explain what these norms are and how a CO is expected to know they exist and comply with them.

4. Page B-7, paragraph C.2.a.(7) ¶ The decision regarding government property should not be made by the 4.e. official but by the head of requiring activity or equivalent level where such administrative matters are routinely settled.

5. Page B-7, paragraph C.2.a.(13) refers to paragraph C.6.b.(2) which does not exist.
6. There are two definitions of the acronym QCP. Page B-8, paragraph C.2.a.(15) refers to the QCP as the “quality control program” and later in C.3.a.(2) as the “quality control plan”.
7. Page B-8, paragraph C.3.a.(3) the 4.e. “official” is misspelled.
8. Page B-9, paragraph C.3.a.(4) lists of requirements should be provided in a table or chart format for ease in identifying separate tasks to be performed.
9. Page B-9, paragraph C.3.a.(7) states that phase-in cost shall be included on Line 3 of the Standard Comparison Form (SCF). In Attachment E it states it should be on Line 5 of the SCF.
10. Page B-10, paragraph C.3.b. The references are difficult to follow. This paragraph is a good example of that. It states “... in accordance with Attachment C and prepare tenders in accordance with C.3.a.”. The paragraph reference is actually in Attachment B.
11. Page B-10, paragraph C.3.d.(2)(b) refers to paragraphs C.6.b.(1)(a) and (b) which do not exist.
12. Page B-11, paragraph C.4.a.(2) refers to paragraph C.4.b. which does not exist.
13. Page B-12, paragraph C.4.a.(3)(a)3. - Line 4 reference to “deficiency notices issued” should be changed to reflect the recognized FAR terminology “technical discussions (or clarifications) raised”.
14. Page B-13, paragraph C.4.a.(3)(b) refers to paragraph C.4.b., which does not exist.
15. Page B-13, paragraph C.4.a.(3)(c) - The third full sentence states the use of “CTTO process shall comply with FAR Part 15 unless otherwise noted in the Circular”. Identify the Circular paragraph that applies, otherwise remove latter portion of sentence that does not apply.
16. Page B-13, paragraph C.4.a.(3)(c)1. - The second sentence infers that a performance decision may be based on factors other than lowest cost contrary to paragraph “a. Low Cost Decision” which a decision is based on low cost. Clarify.
17. Page B-13, paragraph C.4.a.(3)(c)1. refers to paragraph C.4.a.(1)(c), which does not exist.
18. Page B-15, paragraph C.5.a.(2) refers to 4.a. official instead of the correct 4.e. official.

19. Page B-16, paragraph C.5.a.(4) refers to paragraphs C.7.a. and C.7.b.(2), which do not exist.
20. Page B-16, paragraph C.5.b.(2) specifies that the head of the requiring activity to provide written recommendation for exercising option years. It is unnecessary to require this individual for such tasks when in most instances a project/program manager of a lower grade generally authorizes the exercise of an option term.
21. Page B-17, paragraph C.6.a.(1) states that “private sector proposals shall not be subject to appeal” is incorrect, especially when it has been selected as the apparent competition winner.
22. Page B-19, D.2. ¥ We suggest these team designations, responsibilities and restrictions be moved to page B-3 with the other roles and responsibilities.
23. Page B-19, D.2. calls for the CO to provide list of adversely affected Federal employees to selected contractor or public reimbursable. Public reimbursable source is under no obligation to comply with FAR clause 52.207-3.
24. Page C-1 - The direct conversion language in this revision does not reference retaining functions in-house that meet the criteria.
25. Page C-2, paragraphs B and C requires direct conversion certification and competition waiver shall be made and approved by the 4.e. official. The 4.e. official action is an unnecessary administrative burden when deciding on the direct conversion of 10 or fewer FTE.
26. Page C-4, paragraph D.2.b. does not identify the use of other contract types that may be used in the competitive sourcing process.
27. Page C-4, paragraph E.2.b. refers to paragraph C.6. of Attachment B which does not exist. Coverage on Letter of Obligation is found in C.5.a.
28. Page D-1 - Delete the first arrow. This is inappropriate since the topic focuses on ISSA use and reference to private sector performance of commercial activity does not apply in this category.
29. Page D-2, paragraph B.4. specify ISSA plan to be submitted by June 30. Is plan to be submitted with the annual FAIR Act inventory?
30. Page D-3, paragraph H.1.a. refer to “other applicable law” that should be specified or delete text if none to be cited.
31. Page D-3, paragraph H.1.a.(4) follows with “and” which infers that all previous conditions must also apply. Is this a correct assumption?

32. Confusion exists on page D-4, paragraph H.1.e. that addresses acquiring specialized or technical services from state and local government on a reimbursable basis when it mentions Circular A-25 applicability for services the Federal agency receives from a state/local government. Circular A-25 user charges are fees billed to state/local governments for Federal agency provided services, not the reverse.

33. Page E-7, Paragraph B.1.1 should include students and other types of labor sources on the list of categories.